

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

WYETH,)	
)	
)	
)	Plaintiff,
)	
v.)	Civil Action No.: 06-222 JJF
)	
IMPAX LABORATORIES, INC.,)	
)	
)	Defendant.
)	

**REPLY DECLARATION OF MARY B. MATTERER IN FURTHER
SUPPORT OF IMPAX LABORATORIES, INC.'S MOTION
FOR THE APPOINTMENT OF A SPECIAL MASTER
TO MANAGE DISCOVERY AND RESOLVE DISCOVERY DISPUTES**

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IMPAX LABORATORIES, INC.

October 16, 2006

I, Mary B. Matterer, declare:

1. I am a partner at the law firm of Morris, James, Hitchens & Williams LLP, counsel to Defendant Impax Laboratories, Inc. ("Impax") in this matter.

2. Attached hereto as Exhibit 1 is a copy of a letter of October 16, 2006 from Linda A Wadler, counsel to Plaintiff Wyeth ("Wyeth") to Daniel N. Kassabian, counsel to Defendant Impax Laboratories, Inc. ("Impax").

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed on this twenty-fifth day of September, 2006 at Wilmington, Delaware.



MARY B. MATTERER (I.D. No. 2696)

EXHIBIT 1



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October 16, 2006

Via Facsimile

Daniel N. Kassabian, Esq.
Heller Ehrman LLP
333 Bush Street
San Francisco, CA 94104

Wyeth v. Impax Laboratories, Inc., Civil Action No.: 06-222 (D. Del.)

Dear Daniel:

In response to your letter of October 12th, we will provide you with specific feedback on the latest draft of the protective order this week.

The term "data compilations" in Wyeth's General Objection No. 15 to Impax's second set of document requests was intended to refer to only compilations or grouping of data, not written analysis of data.

Wyeth's position on the production of documents containing Teva confidential information has been consistent from the start. For example, Wyeth stated in its response to Impax Interrogatory No. 5 served in July 2006 that Wyeth would produce to Impax the Notice Pursuant to 35 U.S.C. § 282 served by Defendants in the Teva litigation. Moreover, in Wyeth's August 2006 opposition to Impax's motion to compel Wyeth clearly stated at page 1:

Wyeth also has no objection to producing Markman briefing; portions of expert reports, expert depositions and contention interrogatory answers concerning validity; and Teva's proposed amended answer on enforceability *once Teva has redacted its confidential information or given Wyeth permission to produce it.*

The August 28th letter you cite from myself to Mary Matterer similarly states:

Wyeth has agreed to produce deposition transcripts of Wyeth's fact witnesses and exhibits from those depositions; Teva's 35 U.S.C. § 282 Notice; Markman briefing; portions of expert reports, expert depositions and contention interrogatory answers concerning validity; and Teva's proposed amended answer on enforceability *once Teva has redacted its confidential information or given Wyeth permission to produce those documents in unredacted form.*

Daniel N. Kassabian, Esq.
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DUNNER LLP

If this letter is unclear in any way, please let us know.

Thus, there has been no "improper tactic" as your letter alleges. Teva counsel redacted all information it wanted to retain as Teva confidential and gave Wyeth permission to produce the documents in the form in which Wyeth produced them.

Without having reviewed Wyeth's production, you state without basis that Wyeth's "production does not include other documents responsive to Impax's requests" using Wyeth's responses to Teva's documents requests as an example. That document, however, is contained in Wyeth's production.

Finally, as for Impax's access to Wyeth's document production, Impax could have easily reviewed the produced materials that were made available for inspection before October 10, 2006. Impax, however, declined to do so and further refused to pay for its own copies. But in the spirit of cooperation, and because the issue of copy costs is pending before the Court, we will send to your firm this week Wyeth's entire production to date in the format previously prepared as indicated in our earlier production letters to you. We will send you a letter in the near future outlining the specific costs of our production to you, for which we will seek reimbursement, and will await the Court's decision with respect to such payment.

Sincerely,



Linda A. Wadler

LAW/amn

cc: Mary B. Matterer, Esq. (via facsimile)
Richard K. Herrmann, Esq. (via facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of October, 2006, I electronically filed the foregoing document, **DECLARATION OF MARY B. MATTERER IN FURTHER SUPPORT OF IMPAX LABORATORIES, INC.'S MOTION FOR THE APPOINTMENT OF A SPECIAL MASTER TO MANAGE DISCOVERY AND RESOLVE DISCOVERY DISPUTES**, with the Clerk of the Court using CM/ECF which will send notification of such filing to the following:

Jack B. Blumenfeld
Melissa S. Myers
Morris Nichols Arsht & Tunnell
1201 N. Market Street
Wilmington, DE 19801

Additionally, I hereby certify that on the 16th day of October, 2006, the foregoing document was served via email and hand delivery on the above counsel and also via email and federal express (on 10/17/2006) on the following non-registered participants:

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